

19.03.2025
Item No.24, DL
Court No.19
AJ.

**IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION**

C.O. 4012 of 2024

**Sri Debjyoti Bhattacharjee
-Vs-
Pegasus Assets Reconstruction
Private Limited & Ors.**

Mr. Jaydip Kar Sr. Adv,
Mr. Sakya Sen, Sr. Adv.,
Mr. Sudipta Kumar Bose,
Mr. L. Nath,
Mr. Aniruddha Bandyopadhyay,
Mr. Anirban Basak.
....for the petitioner.

Mr. Suman Dutta, Sr. Adv.,
Mr. Krishnaraj Thakker, Sr. Adv.,
Ms. Kanchan Jaju.
...for the O.P. No.1.

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The plaintiff in a money suit is the petitioner of the instant application under Article 227 of the Constitution of India which is directed against Order No. 39 dated October 04, 2024 passed by the Learned Judge, Commercial Court Alipore for districts- 24 Parganas(South), Purba medinipur, Paschim Medinipur and Jhargram in the said suit being Money Suit No. 04 of 2023 subsequently renumbered as Money Suit (Commercial) No.90 of 2023.

The learned Trial Judge by the order impugned, has refused to pass a summary judgment on an application of the plaintiff under Order XIII A of the Code of Civil Procedure.

The plaintiff by the said application had prayed for a summary judgment in respect of part of his claim against the defendant no. 1 alleging that the said defendant has no real prospect of defending the claim successfully.

The defendant no. 1 had contested the said application by filing written objection wherein the defence was taken that the claim of the plaintiff is based on different disputed facts which need to be decided in the suit by trial on evidence, besides the claim is barred by limitation.

The learned Trial Judge, by the order impugned, has dismissed the said application holding that there are several triable issues on disputed facts raised in the plaint including the issue of limitation which can be adjudicated only upon evidence being adduced by the parties in a full-fledged trial.

Heard learned counsel for the parties, perused the materials-on-record.

Rule 3 of Order XIII A of the Code stipulates the grounds for a summary judgment which *inter alia* mandates that the Court may give a summary judgment against a plaintiff or defendant on a claim if it considers that the plaintiff has no real prospect of succeeding on the claim or the defendant has no real prospect of successfully defending the claim, as the case may be, and there is no other compelling reason why the claim should not be disposed of before recording of oral evidence.

Adhering to the said mandate of the said provision of the Code, the plaintiff is obliged to prove that the defendant no. 1 has no real prospect of successfully defending the claim and the defendant no. 1, in turn, is entitled to demonstrate that there exists

such prospect, if necessary, by bringing additional documentary evidence during hearing in terms of Rule 5 of Order XIII A of the Code.

To understand the purport and scope of the words ‘*no real prospect of succeeding*’, it is profitable to quote the observation of Lord Woolf MR of England and Wales Court of Appeal(Civil Division) at Cardiff in the case of **SWAIN v HILLMAN AND ANOTHER** reported in **(2001) 1 All ER 91**.

“The words ‘no real prospect of succeeding’ do not need any amplification, they speak for themselves. The word ‘real’ distinguishes fanciful prospects of success or they direct the court to the need to see whether there is a ‘realistic’ as opposed to a ‘fanciful’ prospect of success.”

It appears from the order impugned that the plaintiff was not invited to identify the grounds on which he is claiming that the defendant no. 1 has no real prospect of successfully defending the claim, consequently the defendant no. 1 was also not asked to show reason as to why it has a real prospect of defending the said claim.

The said exercise since has not been carried out, the application requires a fresh look and to facilitate it, the order impugned is set aside.

The learned Trial Judge is requested to dispose of the said application in the manner as indicated above. It is expected that the learned Trial Judge shall make all endeavour to dispose of it as expeditiously as possible without entertaining the prayer of the parties for any unnecessary adjudication.

It is made clear that this Court has not gone into the merit of the application, all points including the maintainability of the said application is kept open.

C.O. 4012 of 2024 is disposed of with the above term without any order as to costs.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties subject to compliance with all requisite formalities.

(Biswajit Basu, J.)